

Ray Basso/R2/USEPA/US  
03/20/2006 11:47 AM

To george pavlou, Bill Mccabe  
cc  
bcc  
Subject Fw: LPRSA: Passaic River Directive: NJDEP  
Correspondence

FYI

----- Forwarded by Ray Basso/R2/USEPA/US on 03/20/2006 10:47 AM -----

"Hyatt, Jr., William"  
<whyatt@king.com>  
03/20/2006 08:12 AM

To Ray Basso/R2/USEPA/US@EPA  
cc  
Subject FW: LPRSA: Passaic River Directive: NJDEP  
Correspondence

Ray, Here is a note I sent to Eric this morning, following up on the note I sent to Kedari and Pat Friday. Interesting letter from DEP.

William H. Hyatt, Jr.  
Kirkpatrick & Lockhart Nicholson Graham LLP  
973.848.4045 Direct  
973.848.4000 Tel  
973.848.4001 Fax  
One Newark Center  
Tenth Floor  
Newark, NJ 07102  
www.klmg.com

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-----Original Message-----

From: Hyatt, Jr., William  
Sent: Monday, March 20, 2006 7:54 AM  
To: schAAF.eric@epamail.epa.gov  
Cc: Won, Emily L.; 'Reddy.Kedari@epamail.epa.gov'; 'Hick.Patricia@epamail.epa.gov'  
Subject: LPRSA: Passaic River Directive: NJDEP Correspondence

Eric, Carol Dinkins forwarded this letter to me. I assume you knew this was coming. I hope this signals a new day in the relations between EPA and NJDEP.

As I said to Kedari and Pat on Friday, I am very disturbed about the direction of our discussions on the RI/FS. For three months, when we should have been putting the final touches on a settlement, EPA has been struggling with the question whether we are to be given the opportunity

to complete the whole RI/FS, or just parts of it, even though it has become clear that unless we can perform the whole study, we cannot shorten the time, or reduce the expense. Nobody has identified an insurmountable obstacle to our performing the whole study, but we are drifting in the direction of a continuation of the current course, which would supposedly lead to a ROD in 2014. I am told, however, that even that schedule is already more than six months behind. I urge in the strongest of terms that we find a way to make this settlement happen and not derail it for reasons that can be avoided. On Friday, I sent Kedari and Pat a message, offering to come in and talk this through and I hope that they and you will take me up on that offer.

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State of New Jersey  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE  
Governor

LISA P. JACKSON  
Commissioner

March 17, 2006

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Occidental Chemical Corporation  
Tierra Solutions, Inc.  
Maxus Energy Company  
C/O William L. Warren  
Drinker, Biddle & Reath, L.L.P.  
105 College Road East  
Suite 300  
Princeton, New Jersey 08542-0627

Re: December 14, 2005 Directive and Notice to Insurers To Pay the State for the 2,3,7,8-Tetrachlorodibenzo-p-dioxin Source Control Dredge Plan in the Six-Mile Stretch of the Lower Passaic River

Dear Mr. Warren:

Pursuant to the New Jersey Spill Compensation and Control Act, the New Jersey Department of Environmental Protection ("NJDEP") issued a Directive to Occidental Chemical Corporation ("OCC"), Tierra Solutions, Inc. ("Tierra") and Maxus Energy Company ("Maxus") on December 14, 2005 (the "Directive"). The Directive required the payment of \$2,298,106.00 to fund the assessment and development of interim dredging and stabilization measures to address 2,3,7,8-Tetrachlorodibenzo-p-dioxin in the lower six miles of the Passaic River. To date, NJDEP has not sought to enforce the Directive or recover costs associated therewith.

Following the issuance of the Directive, NJDEP and the United States Environmental Protection Agency ("EPA") have agreed to discuss the benefits and efficiencies of combining, in whole or in part, the NJDEP Directive and EPA's recently initiated evaluation of possible interim remedial measures for the Passaic River. If EPA and NJDEP reach an accord on these issues, NJDEP may amend the Directive. Accordingly, until further notified, NJDEP has decided not to seek enforcement of the Directive and Occidental Chemical Corporation, Tierra Solutions, Inc. and Maxus Energy Company need not provide a response to the Directive until otherwise notified by the NJDEP.

If the Directive is amended or revised, NJDEP will provide OCC, Tierra and Maxus with reasonable notice and an opportunity to comply with the amended directive. If OCC, Tierra and Maxus refuse to comply with an amended directive, NJDEP may seek all costs to which it is entitled, including those past costs incurred under the current Directive that are consistent with an amended Directive. If NJDEP does not amend or otherwise modify the Directive and decides to enforce the Directive as written, NJDEP will provide OCC, Tierra and Maxus with reasonable notice and an opportunity to comply with the current Directive.

Consistent with our prior agreements, NJDEP reserves its right to recover treble damages for any directive it chooses to enforce.

Sincerely,

  
Leonard Romino, Director  
Division of Remediation Support

c: Thomas Cozzi, Director  
Ronald Corcory, Assistant Director  
Mark Pedersen, Chief  
John Dickenson, DAG